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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-327

DONALD H. WOOD,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY TO MEMORANDUM OF THE UNITED STATES IN OPPOSITION

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The United States has filed an opposition to the petition for writ of certiorari which does not present any debate on the substance of the issues raised in the petition and this failure to debate the issues the petitioner has raised emphasizes the reasons why a writ should be granted and also makes a reply unnecessary. However, the United States has made one assertion, to which the Court's attention should be directed.

The Court should note that this is a petition for writ of certiorari to review an order granting a motion for

summary judgment. In defense of that summary judgment, the United States now argues (Memorandum in Opposition, page 4):

> "But the circumstances under which the Defense Intelligence Agency determined the competitor levels of these positions, which are fully described in the administrative record (Pet. App. 3c-5c), fully establish that there was no impropriety in the reclassification of petitioner's former position. Petitioner's contrary assertion *raises a purely factual question* that does not warrant review by this Court." (Emphasis supplied.)

This new argument of the United States is contradictory and inconsistent with the defense of an order granting summary judgment. See *Dombrowski v. Eastland*, 387 U.S. 82, 84, 87 S.Ct. 1425, 1427, 18 L.Ed.2d 577 (1967).

Accordingly, the Court is respectfully asked to grant a writ of certiorari.

Respectfully submitted,

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